IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 482 OF 2007

M/s.Zulash Clearing & Shipping Agency ..Petitioner

Vs.

The Chairman, Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay and ors. ..Respondents

Mr. Mahendra Shah, Senior Advocate with Mr. B.I. Dalvi for petitioner.

Mr. S.C. Naidu i/by C.R. Naidu & Co. for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE &
S.R. SAHTE,JJ.

Date : June 11, 2007.

P.C.:

1. Heard Shri Shah the learned Senior Counsel with Mr. B.I. Dalvi for the petitioner and Mr. S.C. Naidu the learned counsel for the respondent nos.1 and 2.

2. This petition filed under Article 226 of the Constitution takes exception to the recovery notice issued by the Tahsildar in the office of District

Collector, Old Customs House, Fort, Mumbai on 3/1/2007 for the recovery of Rs.8,26,404/-. This recovery notice has been undoubtedly issued at the instance of respondent nos.1 and 2. The petitioner is a contractor engaged in transporting, loading and unloading the imported goods of M/s. Rashtriya Chemicals and Fertilizers Limited, on the arrival of the Ship in the dock. The petitioner has its own goods trucks and board supplies the number of workers required to the petitioner. It has entered into contracts for the same with M/s. RCF limited which is the principal employer within the meaning of Section 2(7) of the Maharashtra Mathadi Hamaal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (for short the Act). RCF limited also engages other contractors within the meaning of Section 2(2) of the Act and they are (1) J.M. Baxi & Co., (2) Jaicia Mistry Agencies Pvt. Ltd., (3) Navbharat Corporation, (4) Motiwala & Sons, (5) South India Corporation and (6) Tristar Oceanic Services Pvt. Ltd. All these contractors, including the petitioner, have been registered with the board and RCF is the registered principal employer as per the registration granted on 20/5/1986. The board has

allotted approximately 360 mathadi workers constituted into different groups to RCF for carrying out mathadi work at Chembur and they are directly allotted under the supervision and control of RCF and exclusively to do work for the same company. The wages payable to these contract labourers are either piece rated or daily/monthly rated. Settlements have been signed with the Unions representing the contract labourers regarding the rate of wages and the last settlement had expired on 30/6/1997.

3. Writ Petition No. 1840 of 2000 came to be filed by RCF and a Division Bench of this court disposed off the same on 4/5/2001. It appears that RCF was aggrieved by the unilateral wage increase ordered by the board and, therefore, the matter was remitted to the board for fresh considerations by this court. The board was directed to grant hearing to the petitioner as well as the concerned Unions and pass reasoned order within a period of eight weeks and in the meantime and till the matter was decided by the board, RCF was directed to pay 10% increase to Mathadi workers as was the direction in the impugned order with effect from 1/1/2001. RCF came in the second

round before this court in Writ Petition No. 937 of 2002 challenging the Circular dated 12/1/2002 issued by the board calling upon the company to pay increase of 6% on the existing monthly wages payable to the Mathadi workers with effect from 1/1/2002, thus making the additional increase of 16%. The petition was disposed off by the Division Bench on 27/8/2002 in terms of the following directions:-

(i) The respondent no.2 (now tripartite Board) is directed to consider the issue of increase in wages payable to Mathadi workers finally in accordance with law and the scheme as per the direction given by this court in the order dated 4th May, 2001 expeditiously and in no case later than 3 months from today.

(ii) We direct the petitioner to fully co-operate with the respondent no.2 Board in completing the aforesaid exercise and appear before the Board as and when required and produce all relevant material and documents within the time as may be directed by respondent No.2 Board.

(iii) We observe that if the petitioner intentionally delays the proceedings before respondent No.2 Board in determining the issue of increase in wages finally, it would be open to respondent No.2 Board to pass appropriate order including ex-parte order.

(iv) The direction contained in the circular dated 12th January, 2002 directing pay increase 6% on the existing monthly wages payable to Mathadi workers with effect from 1/1/2002 is rendered ineffective in so far as petitioner is concerned.

4. The board thereafter passed orders on 29/10/2003 and 31/10/2003 but without giving any reasons and, therefore, RCF approached this court in third round in Writ Petition No. 1911 of 2003. The board fairly conceded that no reasons were given in the impugned orders and, therefore, it agreed to recall the said orders and issue a reasoned order as per the directions of this court within four weeks.

The petition was accordingly disposed off on 12/1/2004. The board thereafter passed a fresh reasoned order on 1/3/2004 and the same was challenged by RCF in Writ Petition No.1366 of 2004 which came to be disposed of on 23/12/2004 by a Division Bench of this court by upholding the said order dated 1/3/2004. RCF preferred a SLP and the same is pending. But during the pendency of the SLP, an agreement was entered between RCF and the Unions whereby the over all increase was fixed at 16% of the existing wages effective from 1/1/2001 and tenable upto 31/12/2004.

5. The petitioner is mainly aggrieved by the order dated 1/3/2004 and the challenge to the said order is two folds, namely, (a) the petitioner was not heard by the board when the said order was passed and (b) the board did not take into consideration the financial capacity of the petitioner while passing the said order and instead it took into consideration the financial capacity of RCF only.

6. Reliance has been placed on Clause 32 of the Railway Goods Clearing and Forwarding Un-protected Workers (Regulation of Employment and Welfare) Scheme,

1976 (for short the Scheme). In our earlier order dated 25/4/2007 we have recorded our view that the notice of hearing contemplated under Clause 32 was to the principal employer and not to the contractor or the registered contractor. Notwithstanding these observations, in the affidavit-in-reply filed on behalf of the respondent nos.1 and 2, it has been clearly stated that notices were given to the petitioner and other contractors engaged by RCF. The copies of such notices dated 21/8/2001, 6/9/2001, 10/9/2001 and 20/9/2001 have been annexed to the affidavit-in-reply. We are, therefore, satisfied that the challenge on the first ground to the order dated 1/3/2004 passed by the board is devoid of merits.

7. On the issue of the financial position of the petitioner is concerned, we have no doubt in our minds that while considering the wage rise to the contract labourers, it is the financial capacity of the principal employer which is taken into consideration and the increase in wages as ordered by the board is to be borne by the principal employer. If the contractor has any grievance in this regard and i.e. mainly regarding the revision of rates etc. either on

piece rate basis or on daily or monthly basis, it has to take up the same with the principal employer. The contractor cannot agitate on the ground that its financial capacity has not been taken into consideration by the board while ordering revision in the rates of wages of the Mathadi workers. It is pertinent to note that the petitioner has not even bothered to implead M/s. Rashtriya Chemicals and Fertilizers Limited as the necessary party, though, admittedly, it is the principal employer. The respondent-board also has pointed out that it had issued a notice to the petitioner on 9/11/2006 calling upon it to pay the additional 6% and remit the amount of Rs.8,26,404/-. It has been pointed out further by the board in its affidavit that all other contractors engaged by RCF have complied with the said demand and they are depositing the wages at the revised rates with the board. When the petitioner did not take any steps to comply with the said notices, the board had no alternative but to approach the revenue authorities for the recoveries and consequently the impugned notice dated 3/1/2007 was issued.

8. We are, therefore, satisfied that the

challenge raised by the petitioner to the order dated 1/3/2004 passed by the board or to the notice dated 3/1/2007 issued by the Tahsildar from the office of the District Collector, Old Customs House, Fort, Mumbai is devoid of merits and, therefore, the petition must fail at the threshold.

9. The petition is hereby rejected summarily.

(S.R. Sathe,J.) **(B.H. Marlapalle,J.)**